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FILED

MAY 20 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 135

FREDERICK WALZ,

Appellant,

—against—

TAX COMMISSION OF THE CITY OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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New York, New York 10017

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JURISDICTIONAL STATEMENT

Appellant Frederick Walz appeals from the judgment of the Court of Appeals of New York entered on February 20, 1969, affirming the judgment of the Appellate Division, First Department, which affirmed the judgment of the Supreme Court, New York County.

This Statement is submitted to show that this Court has jurisdiction over the appeal and that the questions are substantial and deserving of plenary consideration.

Opinions Below

The February 20, 1969 order of Remittitur of the Court of Appeals and Opinion (marked "not for publication") are appended hereto as Appendices A and B respectively.

Copy of this order of the Appellate Division and of the judgment of the Supreme Court, New York County, are attached as Appendix C and Appendix D, respectively.

Jurisdiction

This action was commenced by appellant to restrain appellee from allowing real estate tax exemption to religious organizations as authorized by Article 16 of the Constitution of the State of New York on the ground that said exemption is in violation of the first and fourteenth amendments of the federal constitution.

On or about March 5, 1968, the Supreme Court of the State of New York, New York County, entered an order denying appellants' motion for summary judgment and granting appellee's cross-motion for summary judgment dismissing the complaint and judgment was entered accordingly on or about the 22nd day of March, 1968, in the office of the Clerk of New York County. Appellant appealed therefrom to the Appellate Division, First Department, on March 27, 1968.

The Appellate Division, First Department, affirmed unanimously, without opinion, by order entered in the office of the Clerk of said Appellate Division on June 20, 1968.

From said order of the Appellate Division, appellant appealed to the Court of Appeals on July 2, 1968, specifying the first and fourteenth amendments of the federal constitution.

The jurisdiction of this Court to review the judgment of the Court of Appeals of New York on direct appeal is conferred by 28 U.S.C. Sec. 1257(b). Appellant relies on the following cases:

Everson v. *Board of Education,* 330 U.S. pp. 31-2;
McGowan v. *Maryland,* 366 U.S. pp. 442-3;
Torcasso v. *Watkins,* 367 U.S. 492-3, 5;
Abington v. *Schempp,* 374 U.S. 217.

Statutes and Rules Involved

Article 16, Sec. 1 of the New York State Constitution and Sec. 420, sub. 1 of the Real Property Tax Law of New York authorize real property tax exemption of religious organizations. The pertinent parts of these provisions are set forth in Appendices E and F, respectively.

Question Presented

Did the Court of Appeals err in holding that the real property tax exemption of religious organizations is not in violation of the first and fourteenth amendments of the federal constitution?

Statement

When the suit for an injunction was commenced appellant was, and still is, a real property taxpayer of the City of New York and, as further alleged in the complaint, a religious person not a member of any religious organization.

The appellee, as authorized by Sec. 420, subd. 1 of the Real Property Tax Law and Article 16, Sec. 1 of the New York state constitution, regularly grants exemptions from real property taxation to religious organizations on real property used exclusively for religious purposes.

In the complaint, and in the subsequent appeals, appellant contended that the aforesaid exemption violates the first and fourteenth amendments of the federal constitution.

Neither the trial court at Special Term nor the Appellate Division cited any authority against appellant's contention.

The Court of Appeals, unanimously affirming the Appellate Division, cited a number of cases, none of which is squarely in point and each of which is distinguishable, as follows:

People v. *Haring; People* v. *Feitner; Trustees* v. *State of Iowa* and *M. E. Church* v. *Hinton*—all make no reference to the federal constitution.

Garrett v. *Elmhurst* and *Lundberg* v. *Co. of Alameda* —in both cases the tax exemption benefited the public purpose of education.

General Finance Corp. v. *Archetta*—plaintiff was a 'soulless' corporation.

Murray v. *Comptroller*—natural person plaintiffs were atheists (having no religious right suffering infringement) and the corporate co-plaintiff was entitled to the tax exemption it complained of.

Abington v. *Schempp* and *Engel* v. *Vitale*—were "public school religious exercise" cases; in the first a single concurring opinion favored constitutionality of the exemption for religious organizations and in the second a single concurring opinion opposed it. Neither cited authority.

The Question Presented Is Substantial

The civil right of religious freedom of appellant, and all others similarly situated, is affected herein.

CONCLUSION

For the reasons stated, probable jurisdiction should be noted.

Respectfully submitted,

FREDERICK WALZ
Appellant Pro Se

May, 1969

APPENDICES

APPENDIX A

Remittitur

No. 362

(1968)

COURT OF APPEALS

STATE OF NEW YORK, *ss.*:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 20th day of February in the year of our Lord one thousand nine hundred and sixty-nine, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.
RAYMOND J. CANNON,
Clerk.

REMITTITUR February 20, 1969.

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1. No. 362. 68

FREDERICK WALZ,

Appellant,

—VS.—

TAX COMMISSION OF THE CITY OF NEW YORK,

Respondent.

BE IT REMEMBERED, That on the 19th day of July in the year of our Lord one thousand nine hundred and sixty-eight, Frederick Walz, the appellant in this cause, came here unto the Court of Appeals, pro se, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Tax Commission of the City of New York, the respondent in said cause, afterwards appeared in said Court of Appeals by J. Lee Rankin, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals, this cause having been submitted, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now re-

mains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, February 20, 1969.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(Seal)

RAYMOND J. CANNON
Clerk.

APPENDIX B

Opinion of the Court of Appeals of the State of New York

Unrevised and
Uncorrected. Not
For Publication.

STATE OF NEW YORK
COURT OF APPEALS

1. No. 362. 68

FREDERICK WALZ,

Appellant,

vs.

TAX COMMISSION OF THE CITY OF NEW YORK,

Respondent.

PER CURIAM:

Firmly embedded in the law of this State, both by Constitution (art. XVI, §1) and by statute (Real Property Tax Law, §420), is the doctrine that real property owned by a religious corporation and used exclusively for religious purposes is exempt from taxation (see, e.g., *People ex rel. Watchtower Bible & Tract Soc.* v. *Haring,* 8 N Y 2d 350, 357-358; *People ex rel. Church of St. Mary* v. *Feitner,* 168 N. Y. 494, 497) and research discloses—and the 2½ page brief of the plaintiff-appellant herein cites no authority to the contrary—that courts throughout the country have

long and consistently held that the exemption of such real property from taxation does not violate the Constitution of the United States. (See, e.g., *Trustees of Griswold College* v. *State of Iowa,* 46 Iowa 275, 282 [1877]; *Methodist Episcopal Church, South* v. *Hinton,* 92 Tenn. 188 [1892]; *Garrett Biblical Institute* v. *Elmhurst State Bank,* 331 Ill. 308 [1928]; *Lundberg* v. *County of Alameda,* 46 Cal. 2d 644, app. dismd. 352 U. S. 921 [1956]; *General Finance Corp.* v. *Archetto,* 93 R. I. 392, app. dismd. 369 U. S. 423 [1962]; *Murray* v. *Comptroller of the Treasury,* 241 Md. 383, cert. den. 385 U. S. 865 [1966]; see, also *Abington School District* v. *Schempp,* 374 U. S. 203, 301 [*per* Brennan, J., concurring [1963]]. But see, contra, *Engel* v. *Vitale,* 370 U. S. 421, 437, *per* Douglas, J., concurring [1962].) We see no reason for departing from this conclusion in this case.

The question of the plaintiff's standing to maintain this action has not been raised.

The order appealed from should be affirmed, with costs.

• • • • •

Order affirmed, with costs. Opinion Per Curiam. All concur, Burke, J., in result.

APPENDIX C

Order of Affirmance Appealed From

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 20th day of June, 1968.

Present:

HON. HAROLD A. STEVENS,
Justice Presiding,

" ARON STEUER,
" GEORGE TILZER,
" OWEN MCGIVERN,
" BENJAMIN J. RABIN,
Justices.

13361

An appeal having been taken to this Court by the plaintiff-appellant from an order of the Supreme Court, New York County, entered on the 5th day of March, 1968, denying plaintiff's motion for summary judgment on the cause of action set forth in the complaint and granting defendant's cross-motion for summary judgment dismissing the complaint, and from the judgment entered in the office of the Clerk of the County of New York, on the 22nd day of March, 1968, and said appeal having been argued by Mr. Frederick Walz, of counsel for the appellant, and by Mr. Edith I. Spivack, of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered ε adjudged that the order and judgment so appealed fr be and the same are hereby, in all things, affirmed; anhat the respondent recover of the appellant $50 costs oais appeal.

Enter:

HAN W. GAMSO,
Clerk.

APPENDIX D

Judgment Appealed From

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Reg. 580 Fol. 486

[SAME TITLE]

The defendant, Tax Commission of the City of New York, having cross-moved for summary judgment dismissing the complaint herein for failure to state a cause of action, pursuant to the provisions of Rule 3211 of the CPLR, and an order having been duly entered in the office of the Clerk of the Supreme Court, County of New York, on the 5th day of March 1968, granting the cross-motion, and dismissing the complaint, and the costs of the defendant, having been duly taxed at the sum of $25.00.

Now on motion of J. Lee Rankin, Corporation Counsel, attorney for defendant, Tax Commission of the City of New York, it is

ADJUDGED that the complaint be and the same hereby is dismissed, and it is further

ADJUDGED that the defendant, Tax Commission of the City of New York (Municipal Building, New York, N. Y. 10007) recover of the plaintiff Frederick Walz (60 East 42nd Street, New York, N. Y.) the sum of $25.00, costs as taxed, and that said defendant have execution therefor.

Judgment entered this 22nd day of March, 1968.

JAMES McGURRIN
Clerk

APPENDIX E

Article 16, Sec. 1, of the New York State Constitution:

Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

APPENDIX F

Sec. 420, sub. 1, Real Property Tax Law of New York:

Real property owned by a corporation or association organized exclusively for . . . religious . . . purposes . . . and used exclusively for carrying out thereupon one or more of such purposes . . . shall be exempt from taxation as provided in this section.